

ARTICULABLE SUSPICION

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SAVAGE TO LEAD NH CHIEFS

At the recent annual conference of the NH Association of Chiefs of Police held at The Balsams Resort in Dixville Notch, Chief Stephen Savage of the Plaistow Police Department was chosen as President, and will lead the Association for the ensuing year.

The additional slate of officers, elected to progress through the chairs year by year to the Presidency, were First Vice-President Chief Nathaniel Sawyer of New Hampton; Second Vice-President Chief James Valiquet of Newbury; Third Vice President Chief Evan Haglund of Pelham, and Sergeant-at-Arms Chief Robert Wunderlich of Deerfield. Chief Edward Garone of Derry was re-elected as Secretary, and Chief Michael Daley of Stratham was re-elected as Treasurer. Chief Timothy Russell of Henniker was re-elected as NH representative to SACOP, the State Association of Chiefs of Police of the IACP.

The following members were elected to the Executive Board: Chiefs John Curran of Meredith, Peter Morency of Berlin, Nelson Forest of Franklin, Philip English of Nottingham, Robert Stafford of Hillsborough, W. Garrett Chamberlain of New Ipswich, Richard Gendron of Hudson, and Robert Wharem of Pittsfield.

Committee Chairs chosen included Audit, Chief Gary Maguire of Amherst; By-Laws, Chief James Valiquet of Newbury; Cadet Academy, Chief Nathaniel Sawyer of New Hampton; Chiefs' Advocacy, Chief Richard Darling of Hollis; *Chief Magazine*, Michael Bucci and Nancy Keller; Criminal Justice Information System, Director Keith Lohmann of Police Standards & Training; Conference, Chief John Curran of Meredith; Drug Enforcement, Chief Philip English of Nottingham; Emergency Communications, Chief James Valiquet of Newbury; Finance, Chief Nathaniel Sawyer of New Hampton; Governmental Relations, Chief Martin Dunn of Jaffrey; Highway Safety, Chief Joseph Ryan of Londonderry; 100 Club, Michael Bucci; Torch Run, Chief Peter Morency of Berlin; Legal Officer, James Reams, Rockingham County Attorney; Legislative/Retirement, Chief William Wrenn of Hampton; Membership & Mentoring, Chief Richard Darling of Hollis; Police Memorial, Chief Timothy Russell of Henniker; Parliamentarian, Chief Richard Gendron of

Hudson; Professional Standards, Chief Gendron; Scholarship, Chief Michael Daley of Stratham; Training, Director Keith Lohmann of Police Standards & Training; and Ways and Means, Chief Gregory Dodge of Epping.

JEANETTE EVANS RETIRES FROM PSTC

After 17 years of dedicated service to Police Standards & Training, Administrative Assistant Jeanette Evans is retiring on July 1. Jeanette handled many duties at PSTC, especially attending monthly Council meetings for 15 years and taking care of the paperwork involved in Council business. We will miss her pleasant and witty personality, and we wish her a very happy retirement. Congratulations, Jeanette!

PREVIEW OF COMING ATTRACTIONS

Very shortly, we will issue our Special Legislative Edition of *Articulate Suspicion*, in which we list and describe all the new laws passed by the 2004 session of the New Hampshire Legislature, which just adjourned. Watch for it.

SUPREME COURT CASES OF INTEREST

The United States Supreme Court recently decided a flurry of cases of interest to law enforcement, including those outlined below.

ARREST OF RECENT OCCUPANT OF A VEHICLE

In *Thornton v. U.S.*, #03-5165, decided May 24, 2004, the majority of a divided Supreme Court decided that when searching the occupant of a motor vehicle incident to a valid arrest, it makes no difference whether the person is in the vehicle at the time, or has exited it prior to the time the police initiated contact with him or her - the entire passenger compartment of the vehicle may still be searched incident to the arrest. This new rule clarifies the longstanding rule in *N.Y. v. Belton*, 453 U.S. 454 (1981), that incident to a valid arrest, the "wingspan" of an arrested person as defined in *Chimel v. California*, 395 U.S. 752 can be broadened to include the car's passenger compartment and any open or closed containers therein.

The question in this case was, "Does the *Belton* rule only apply when the person is sitting in the vehicle at the time the police initiate contact, or does it also apply to a situation where a person has been a recent occupant of the vehicle and has voluntarily exited the vehicle and is walking away when the police arrive to make the arrest?"

The circumstances were that an officer on patrol in an unmarked cruiser checked the plates on the car the defendant was driving, and found they were listed to a different vehicle. Before the officer could pull Thornton over, he pulled into a parking lot and got out of his car. The officer followed him, alighted from the cruiser, and approached the defendant on foot. Thornton appeared nervous and fearing for his safety. The officer pat-frisked him and discovered by "plain feel" drugs in his pocket. He was immediately arrested for possession of illegal drugs, handcuffed, and put in the cage in the back seat of the patrol car. The officer then searched the interior of the vehicle incident to the arrest and discovered a handgun, which led to a possession of illegal firearms charge.

The Court pointed out that the purpose of the *Chimel* and *Belton* rules was to protect officer safety and prevent the destruction of evidence. Because lower courts have disagreed as to what makes a person a "recent occupant" of a vehicle and thus subject to search under *Belton*, the Supreme Court sought to clarify the issue. Was a person still a "recent occupant" if they were already out of the car when the officer approached?

The opinion was written by Chief Justice William Rehnquist, who said in all relevant aspects, the arrest of a person next to a vehicle presents identical concerns regarding officer safety and destruction of evidence as the arrest of someone who is inside the vehicle. He said there is simply no basis to conclude that the span of the area within the arrested person's immediate control (his or her "lunging zone") must be determined by the timing of the officer's first contact. A custodial arrest, the Court said, is a "fluid and highly volatile" situation and officers should be free to make a judgment as to whether it would be safer and more effective for them not to initiate a contact until the person has exited the vehicle. Although not all contraband in the passenger compartment (such as the gun under the front seat in this case) is likely to be accessible to the "recent occupant", the Court said there is a need for a clear-cut rule, readily understood by officers and not depending on differing estimates and arguments over what items were and were not in reach of the arrestee at any particular moment in time, and certainly does not turn on whether the defendant was aware of the officer's presence when he or she alighted from their vehicle.

Justice Antonin Scalia, joined by Justice Ruth Bader Ginsburg, concurred with the Chief Justice but filed separate opinions in which they suggested that the rule should be limited to cases where it is reasonable to believe evidence of the crime charged might be found in the vehicle. Here, Scalia said it was not reasonable to believe the gun was within Thornton's reach from outside the vehicle, but having found drugs on him after he denied having any, it was reasonable to believe there might be more contraband in the vehicle.

Justice Sandra Day O'Connor agreed with the opinion, but filed a separate disagreement with a footnote in the decision that said Scalia's dissent exceeded the scope of the question presented. She felt Scalia's argument was more cogent but refused to adopt it because it had not been briefed or argued.

The Court's liberal wing was well represented by dissenting Justice John Paul Stevens, joined by New Hampshire's own David Souter, who said this was a "massive broadening" of the automobile exception that would lead to a "swollen rule". They claimed once a person is outside his vehicle he becomes merely "a pedestrian" and the police should be required to establish that there was real reason to fear for their safety or for the destruction of evidence in order to search the vehicle.

Of course, this discourse may all be academic to those of us in New Hampshire anyway, because of the NH Supreme Court's interpretation of the State Constitution in *State v. Sterndale*, 139 NH 445 (1995) in which they declared that in order to search a vehicle incident to arrest, there must be probable cause to believe weapons or contraband will be found in the vehicle, plus exigent circumstances that prevent getting a warrant, if the subject is under arrest and effectively restrained or backup is present at the scene. The only saving grace there is to post a guard over the vehicle and obtain a warrant, or if your policy provides for it, tow the vehicle and perform an inventory search.

FAILURE TO CONSIDER AGE IN *MIRANDA* DOES NOT INVALIDATE CONFESSION

In *Yarborough v. Alvarado*, #02-1684, decided June 1, 2004, the Supreme Court decided that the confession of a juvenile is admissible despite the failure of the trial court to consider the youth's age and inexperience with the criminal justice system in determining whether or not he was "in custody" at the time of the confession and needed to be given the *Miranda* warning. They said the question of custody is an objective one, and officers cannot be expected to investigate or speculate as to the suspect's prior experience with the system in

determining whether a youth who is free to leave should be given the *Miranda* warning prior to questioning him. However, they refused to say that a suspect's youth never must be taken into consideration in a custody determination.

Here, police investigating a murder told Alvarado's mother they needed to speak with him. He was 17 at the time and had never been questioned by the police. Both his parents brought him to the sheriff's station and the police questioned him without his parents being present, and in fact denied them to be present. During a two-hour interview, he was not advised of his rights. He initially denied any involvement in the crime, and eventually made incriminating statements after being told that witnesses had implicated him. He was then allowed to go home with his parents, and was charged at a later date.

Two discrete inquiries are necessary to determine whether a person is in custody - the circumstances surrounding the interrogation, and whether, given those circumstances, a reasonable person would feel free to terminate the interview and leave at any time, *Thompson v. Keohane*, 516 U.S. 99 (1995). Once the "scene is set," the court must apply as an objective test, "Was there a formal arrest or restraint of freedom of movement of the degree associated with a formal arrest?" If there was, the person should be given *Miranda*. What matters is not whether the police feel the person was in custody, but what a reasonable person standing in the suspect's shoes would feel.

Justice Anthony Kennedy, writing the majority opinion, said in essence this is up to the trial court judge to decide, and the judge need not make a specific finding about the youth's age or inexperience with the justice system. He said that in most cases the police will not know the youth's prior interrogation history and even if they do, they would not know how it would impact on his feeling of freedom to terminate the interview. Police should not be required to consider such psychological factors when deciding whether or not to give the warnings.

Justice Sandra Day O'Connor concurred, saying there may be cases where a suspect's age would be relevant to the "in custody or not" inquiry, but here, the defendant was almost 18 at the time. Chief Justice Rehnquist and Justices Antonin Scalia and Clarence Thomas agreed with the decision.

Dissenting were the usual - Associate Justices John Paul Stevens, David Souter, and Ruth Bader Ginsburg. They said the youth was clearly in custody at the time, because he was separated from his parents, and even his coming to the station was not truly voluntary because he was brought there by his parents, and so

might not have felt free to leave. They said the court erred when it did not consider the youth's age and inexperience. Here, although the youth was given a water break during the interview, he was never told that he was not under arrest or could leave at any time, he was confronted with accusations that witnesses had seen him commit a crime, and although he was told the questioning would be brief, he was in a private interview room for more than two hours. No reasonable person his age would have thought he and not the police controlled the interview, the dissenting jurists said.

In applying this decision to New Hampshire law, officers would have two more factors to consider. First, if they did warn the person of his rights, if the person was a juvenile, they would have to issue the expanded warning for juveniles set forth in *State v. Benoit*, 126 NH 6 (1985), decided under the State Constitution. Second, if the parents were present, under *State v. Farrell*, 145 NH 733 (2001), the police could not bar them from the interview room.

HEARSAY STATEMENTS INADMISSIBLE AT TRIAL, COURT SAYS, TURNING PRIOR LAW INSIDE OUT

In *Crawford v. Washington*, #02-9410, decided March 8, 2004, the Supreme Court ruled that the recorded statement of a suspect's spouse, made to police during the course of a criminal investigation, was inadmissible against the spouse at trial, even though the spousal privilege did not apply. The Court reasoned that admitting the statement would be inadmissible hearsay because it violated the Confrontation Clause of the 6th Amendment inasmuch as the wife would not be present in court for cross-examination. In doing so, the Court abandoned generations of settled law on hearsay evidence and may throw jurisprudence into turmoil until further rulings clarify how far they meant this broad and sweeping decision to go.

In this case, a man was stabbed at his apartment. The police arrested Crawford later that night. He and his wife were warned of their rights and each was interrogated twice. Crawford eventually told the police that he and his wife had gone in search of Lee because he had earlier tried to rape Mrs. Crawford. They found Lee at his apartment, and a fight ensued. Lee was stabbed and Crawford's hand was cut. Crawford was charged with assault and attempted murder. He claimed self-defense. His wife did not testify because he claimed the husband-wife privilege. However, the privilege in Washington State does not apply to a spouse's out-of-court statements if they fall under one of the recognized exceptions to the Hearsay Rule. So, the prosecutor played a tape of Mrs. Crawford's statements to the jury.

In the past, the Supreme Court has ruled that statements to the police where a witness is unavailable for any reason are admissible if they contain "adequate indicia of reliability", *Ohio v. Roberts*, 448 U.S. 56 (1980). The trial court found the wife's statement "trustworthy" and allowed it into evidence, and the Washington Supreme Court agreed. However, the U.S. Supreme Court reversed the conviction. Justice Antonin Scalia, writing the majority opinion, traced the right of confrontation back to early Roman times and up through several centuries of English and colonial American common law and concluded that the framers of the Constitution would not have considered the admission of the wife's statement proper. He based his decision in part of a long-ago court's disapproval of the treatment of Sir Walter Raleigh in his trial for treason in England in 1603, and stated the "principal evil against which the Confrontation Clause was directed" was the use of ex parte (one person) examinations as evidence against the accused.

Although many out-of-court statements have traditionally been admitted as exceptions to the Hearsay Rule, the Supreme Court has now rejected the view that the Confrontation Clause applies only to in-court testimony and that the admissibility of out-of-court statements is governed solely by the Rules of Evidence. "Leaving the regulation of out-of-court statements to the Rules of Evidence would render the Clause powerless to prevent even the most flagrant inquisitorial practices," Scalia said.

The Court stopped short of barring all hearsay statements in criminal cases, but limited its ban to those that are "testimonial" in nature. This leaves open many questions, such as what to do about dying declarations, for example, which certainly are testimonial in nature. They said, "The Framers would not have allowed admission of testimonial statements of a witness who did not appear at trial unless he was unavailable to testify, and the defendant had a prior opportunity to cross-examine."

What is definitely clear is this - mere reliability of an out-of-court statement is insufficient to justify its admission in a criminal case (civil cases are not affected by this ruling). Because of the complicated reasoning of the decision, the many, many hearsay statements that are allowed in the Rules of Evidence, and the issues left unresolved, it is difficult to predict the mischief this decision will cause. Partly this is because the Court also mysteriously said, "We leave for another day any effort to spell out a comprehensive definition of 'testimonial'." However, they did make it clear that, "Whatever else the term testimonial covers, it applies at a minimum to police interrogations." It thus looks as though any statement made to the police by anyone during a criminal investigation will be

inadmissible at trial unless the person who made it is either present for cross-examination or was cross-examined at an earlier date, such as during depositions. This may spur prosecutors to take more depositions to guarantee that if witnesses are unavailable for trial, their statements can be used.

The ruling does not mean you can't question or take statements from witnesses. It doesn't mean those statements will never be admissible in court. What it certainly does mean is that it will be much more difficult to use them in trials, and many will simply not be admissible.

SUSPECT MUST GIVE NAME TO POLICE

In *Hibel v. Humboldt County*, #03-554, decided June 21, 2004, a bitterly divided Supreme Court upheld the constitutionality of a Nevada law that requires a person who is stopped and momentarily detained by an officer under suspicious circumstances to identify him or herself upon request of the officer.

The Humboldt County, Nevada Sheriff's Office received a call that a man had seen another man assault a woman in a red and silver GMC pickup truck on Grass Valley Road. A deputy responded and found the truck parked on the side of the road, with Hibel standing beside it and young woman sitting inside it. There were skidmarks in the gravel indicating the vehicle had come to a sudden stop. The deputy approached Hibel and said he was investigating a report of a fight. The man appeared to be intoxicated. The deputy asked Hibel if he had any identification on him and Hibel refused and asked why the officer wanted to see it. The deputy said he was conducting an investigation and needed to see some I.D. The man became agitated and insisted he had committed no crime. After continued refusals to identify himself, the man began to taunt the deputy by placing his hands behind his back and challenging the deputy to arrest him and take him to jail. This routine kept up for several minutes, while the deputy asked 11 separate times for the man's identity and warned him that he would be arrested if he continued to refuse to comply. He was ultimately placed under arrest for violating a provision of the Nevada Penal Code that says a peace officer may detain any person under circumstances which reasonably indicate the person has committed, is committing, or is about to commit a crime, only to ascertain his identity and the "suspicious circumstances surrounding his presence abroad," and any person so detained shall identify himself, but "may not be compelled to answer any other inquiry of any peace officer."

Hibel was convicted in the local court of obstructing and delaying an officer in the performance of his duty

and fined \$250. The Supreme Court of Nevada upheld his conviction.

The Court said "stop and identify" statutes (and it even cited New Hampshire's RSA 594:2 and 644:6 - loitering law) are rooted in early English vagrancy laws that required vagrants to face arrest unless they "gave a good account of themselves." The Court noted that vagrancy laws have generally been overturned as void for vagueness, *Papachristou v. Jacksonville*, 405 U.S. 156 (1972), and that "stop and identify" statutes that do not require articulable suspicion have likewise been struck down, *Brown v. Texas*, 443 U.S. 47 (1979). The Court has also ruled that merely stopping a black man because he was walking at night in a white neighborhood and requesting him to show I.D. violated the 4th Amendment's right to privacy, *Kolender v. Lawson*, 461 U.S. 362 (1983). It said a California statute requiring "credible and reliable" identification under such circumstances was too vague and provided no standard for determining what a person must do to comply with it, resulting in "virtually unrestrained power to arrest and charge persons with a violation."

Justice Anthony Kennedy, delivering the majority opinion, said the present case began where the others left off. There was no question there was articulable suspicion for the stop, given the eyewitness report of a man assaulting a woman, the truck matching the description, the presence of a man and a woman at the scene, and skidmarks indicating a sudden stop. Kennedy said the Nevada statute is considerably less loosely written than the others that have been struck down. It does not require the suspect to produce any document, and if he gives his name, no violation occurs. The Justice said asking questions is an essential part of police investigations and an officer is free to ask a person for I.D. without implicating the 4th Amendment. This does not, by itself, constitute a seizure, *I.N.S. v. Delgado*, 466 U.S. 210 (1984), *Terry v. Ohio*, 392 U.S. 1 (1968). An officer's reasonable suspicion that criminal activity is afoot permits stopping a suspect for a brief time and taking additional steps to investigate further, *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975). Such a stop must be justified in the beginning and reasonably related in scope and duration to the circumstances that justified it in the first place, *U.S. v. Sharpe*, 470 U.S. 675 (1985), *U.S. v. Place*, 462 U.S. 696 (1983) and may not closely resemble a traditional arrest, *Dunaway v. N.Y.*, 442 U.S. 200 (1979). Questions concerning a suspect's identity are a routine and accepted part of many stops, *U.S. v. Hensley*, 469 U.S. 221 (1985). The ability to briefly stop a suspect, ask questions, or check I.D. in the absence of probable cause promotes the strong government interest in solving crimes and bringing offenders to justice, *Hayes v. Florida*, 470 U.S. 811 (1985). With articulable facts supporting a reasonable

suspicion that a person has committed a criminal offense, that person may be stopped in order to identify him, question him briefly, or detain him briefly while attempting to obtain additional information, *Adams v. Williams*, 407 U.S. 143 (1972). Such a stop may be "most reasonable in light of the facts known to the officer at the time," and serves important government interests. Knowledge of identity may inform an officer that a suspect is wanted for another offense, or has a record of violence or mental disorder. On the other hand, it may help clear a suspect and allow the police to concentrate their efforts elsewhere. It may be particularly important in cases such as this, investigating what appeared to be a domestic assault. Officers responding to domestics need to know whom they are dealing with in order to assess the situation, the threat to their own safety, and possible danger to the potential victim.

Justice Kennedy said although it is well known that an officer may ask a suspect to identify himself during a *Terry* stop, it has been an open question whether the person can be arrested and prosecuted for refusal to do so. The 4th Amendment does not impose obligations on a citizen, but rather provides rights against the government. The 4th Amendment cannot compel a suspect to answer questions. However, here, the case turned not on the 4th Amendment, but on Nevada state law. The *Terry* principles allow a state to require a suspect to disclose his or her name in the course of an articulable suspicion stop. Such a request has an immediate relation to the purpose, rationale, and practical demands of the stop. The threat of criminal sanction helps ensure that the request for identification "does not become a legal nullity." The deputy's request to Hibel to identify himself was "a common-sense inquiry, not an effort to obtain an arrest for failure to identify after a stop yielded insufficient evidence."

Neither did the request violate the 5th Amendment's prohibition against self-incrimination, which prohibits any statement that is "testimonial, incriminating, and compelled," *U.S. v. Hubbell*, 530 U.S. 27 (2000). Declining to rule whether or not the requests were testimonial in nature, the Court said that in this case, disclosure of his name placed Hibel in no reasonable danger of incrimination (thus leaving sort of open the question of what if his name revealed him to be a wanted person). It did not furnish a link in a chain of evidence needed to prosecute him. He only refused to give his name because he "thought it was none of the officer's business." A person's identity is a universal characteristic even though it is unique, and would be incriminating only in unusual circumstances. In every criminal case, it is known and must be known who has been arrested and who is being tried, *Pennsylvania v. Muniz*, 496 U.S. 582 (1990) (quoting a concurring

opinion). Even witnesses planning to invoke the 5th Amendment on the stand are required to answer when their names are called to take the stand. Only if a case arises where there is a substantial allegation that furnishing identity at the time of a stop would give the police a link in the chain of evidence needed to convict a person of a separate offense should the court be required to consider whether the 5th Amendment applies and if so, what remedy is appropriate. "We need not resolve those questions here," the Court said. Chief Justice Rehnquist and Associate Justices O'Connor, Scalia, and Thomas agreed.

Two dissenting opinions were filed, one by Associate Justice John Paul Stevens, and a second by Justice Breyer, joined by New Hampshire's Souter and Associate Justice Ginsburg. Stevens complained that the Nevada law "imposes a narrow duty to speak on a specific class of individuals," those detained by the police. He claimed the right against self-incrimination applied even in this case. He noted that voice exemplars, blood samples, and handwriting samples are non-testimonial in nature, but felt that giving one's name is. Breyer, Souter and Ginsburg argued that a person's name could be incriminating and thus a person has a right to "stay put and remain silent in the face of police questioning."

How will this decision square with New Hampshire law? The ink was scarcely dry on the decision when an article by a NH defense attorney appeared in the *Manchester Union Leader* claiming that under *State v. White*, 119 NH 567 (1979), such a police inquiry would be barred by the State Constitution, if it was supported by anything less than probable cause. We do not feel this is the case. *State v. White* followed federal case law in *Dunaway v. New York*, 442 U.S. 200 (1979) which said that photographs and handwriting samples seized from an individual who was arrested on less than probable cause were inadmissible in court. The *White* case followed this case, and said that an ex-employee, who was suspected by his employer of stealing money from him, could not be picked up and taken to the police station involuntarily for questioning without an arrest warrant, unless exigent circumstances existed, and that a confession obtained from him under those circumstances was inadmissible. However, that case was far different than, for example, arresting a person under New Hampshire's loitering law (RSA 644:6) or making a *Terry* stop on articulable suspicion. To decree otherwise is to overlook many other subsequent New Hampshire cases, such as *State v. Parker*, 127 NH 525 (1985), *State v. Jaroma*, 137 NH 562 (1993), *State v. Maya*, 126 NH 590 (1985), *State v. Reid*, 135 NH 376 (1992), *State v. Noel*, 137 NH 384 (1993), *State v. Hamel*, 123 NH 670 (1983), *State v. Chaloux*, 130 NH 809 (1988), *State v. Pierce*, 126 NH 257 (1985), *State v. Glaude*, 131 NH

218 (1988), *State v. Oxley*, 127 NH 407 (1985), *State v. Feole*, 121 NH 464 (1981), *State v. Landry*, 116 NH 288 (1976), and many others. We believe this new federal case is good law in New Hampshire unless and until our Supreme Court decides otherwise.

"TWO-STAGE" INTERROGATION VIOLATES SUSPECT'S RIGHTS

Some officers use a technique where they interrogate a suspect without giving any warning of rights, wait until the suspect begins to incriminate him/herself, then go on and administer the *Miranda* warning and take a further, warned statement. This technique has now been declared illegal by the U.S. Supreme Court's ruling in *Missouri v. Seibert*, #02-1371, decided June 28, 2004.

New Hampshire's Associate Justice David Souter wrote the decision, concurred in by Associate Justices Stevens, Ginsburg, and Breyer. Justice Breyer also filed a second, concurring opinion, and a dissent was filed by Justice Sandra Day O'Connor, which was joined by Chief Justice Rehnquist and Associate Justices Scalia and Thomas.

The case tested a police tactic for custodial interrogations that called for giving no warnings of rights to silence and counsel until the suspect had begun to make damaging admissions. Although such a statement would normally be inadmissible if the suspect was under arrest or in custody, the interrogating officer follows it up with the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1996), and leads the suspect over the same verbal ground a second time, and uses this second statement in court.

Ruling that this "midstream recitation of warnings after a first unwarned interrogation and confession" does not effectively comply with the *Miranda* requirement, the Court said such a statement repeated after a warning under such circumstances is inadmissible at trial.

In this case, Patrice Seibert's 12-year-old son, Jonathan, a victim of cerebral palsy, died in his sleep and his mother feared she would be charged with neglect because of bedsores on his body. In her presence, two of her teenage sons and two of their friends developed a scheme to conceal the facts of the death by burning the family's mobile home with Jonathan and Donald Rector, a mentally ill teenager living with them, in it, to give the appearance that Jonathan was not alone and unattended when he died. One son and a friend set the fire, and Donald Rector died in it.

Five days later, the police awakened Ms. Seibert at 3 a.m. at a hospital where one of the friends who set the fire was being treated for burns. The investigating officer, advised by another officer not to give *Miranda* warnings but to use this tactic, took Seibert to the police station and left her alone in the interrogation room about a quarter-hour, after which he questioned her for 30-40 minutes without warning her of her rights. He kept squeezing her arm and telling her Donald Rector was going to die in his sleep. She finally admitted she knew Donald was supposed to have died in the fire, and the officer then gave her a 20-minute coffee and cigarette break, administered the *Miranda* warnings and obtained a waiver, then resumed questioning her, this time on tape. She made further admissions and was charged with murder.

At trial, her statement was challenged on grounds that she was not warned of her rights at the outset of the questioning. The investigating officer testified that he was using a new technique he had learned - question first, then give the warnings and repeat the question until you get the answer she had already provided once. The trial court suppressed the first statement but admitted the second, relying on *Oregon v. Elstad*, 470 U.S. 298 (1985), which says that if an officer forgets to give the *Miranda* warning and obtains a confession, but then after a gap in time administers the warning, obtains a waiver and obtains a second confession, the second confession is admissible. The Supreme Court of Missouri overturned the lower court's decision, however, and this appeal to the U.S. Supreme Court followed. It distinguished this case from *Elstad*, in which the warnings had been accidentally rather than deliberately withheld, and said a deliberate "end run" around *Miranda* violates a person's rights.

The U.S. Supreme Court agreed with the Missouri Supreme Court. They said any statement must be voluntary in nature and if the suspects are in custody or deprived of their freedom in any significant way, they must be warned of their rights before any questioning. This encompasses all interrogation practices which are likely to exert enough pressure on a person to overbear their free will. Noting that this new technique has been taught in national interrogation schools and used by a number of police departments, the Court said such a tactic diminishes the effectiveness of the warnings and renders any confession made involuntary. "By any objective measure," this tactic is intended to undermine the warnings. "Strategists dedicated to draining the substance out of *Miranda* cannot accomplish" what the Congress tried unsuccessfully to do by statute, the Court said. Seibert's statements were inadmissible.

In his separate concurring opinion, Justice Breyer said courts should exclude the fruits of any unwarned

questioning unless the failure to warn was in good faith. Justice Kennedy wrote another concurring opinion and said such a statement should be barred only in cases where there was a calculated effort to undermine the warnings.

The dissenting Justices would have allowed the statement to be used in court, because they felt the taint of the first illegal interrogation had been removed by the 20-minute gap in time and the administration of the warnings.

IF SUSPECTS CLAIM TO KNOW THEIR RIGHTS, WARNINGS MAY BE SKIPPED

In *U.S. v. Samuel Francis Patane*, #02-1183, decided June 28, 2004, the U.S. Supreme Court confronted the case of a suspect who interrupted the police administration of the *Miranda* warning by telling them he knew his rights. The question was, were the police bound to continue with the warning anyway, or could they simply obtain a waiver from the suspect and begin the questioning? If they were bound to give the warning, should not only the confession, but any evidence gained as a result of it ("fruit of the poisoned tree") be suppressed?

Associate Justice Clarence Thomas wrote the majority opinion in which Chief Justice Rehnquist and Associate Justice Scalia concurred, upholding the confession. Justice Kennedy, joined by Justice O'Connor, filed a separate concurring opinion. New Hampshire's Associate Justice Souter, going 3 for 3 this month, wrote the dissenting opinion, in which Associate Justices Stevens and Ginsburg agreed, and Associate Justice Breyer wrote a separate dissenting opinion.

The defendant was arrested for harassing his ex-girlfriend, released on bond, and served with a temporary restraining order. He violated the order by attempting to contact her by phone. A Colorado Springs, CO officer investigated. On the same day, a federal ATF agent was told by a county probation officer that Patane, a convicted felon, possessed a .40 caliber Glock pistol. This information was relayed to the Colorado Springs officer who, with a partner, went to Patane's residence, asked him about his attempts to contact his ex-girlfriend, and arrested him for violating the restraining order. They tried to advise him of his rights, but as soon as they got to the part about remaining silent, he interrupted them and told them he knew his rights. Neither officer attempted to complete the warning. He was asked about the pistol and at first said he was not sure he should say anything about it because he didn't want the officers to confiscate it from him. They persisted, however, and he told them the gun was in his bedroom and gave them permission to

get it. They found the pistol where he said it would be, and seized it. He was also charged with being a felon in possession of a firearm.

The District Court would not allow the gun into evidence, reasoning that the officers lacked probable cause to arrest Patane for violating the restraining order, and refusing to rule on whether the unwarned confession violated his rights. The Court of Appeals overturned this ruling with regard to the probable cause argument, but suppressed the gun on grounds that the confession was unwarned. This appeal to the Supreme Court followed.

The Supreme Court ruled that *Miranda* is a prophylactic rule employed to prevent violations against the 5th Amendment's Self-Incrimination Clause. The Clause does not, however, require suppression of fruit of a voluntary statement. There is no justification for extending *Miranda* that far. It is not a code for police conduct, and police do not violate it by a simple failure to warn. The exclusionary rule in the 14th Amendment does not apply.

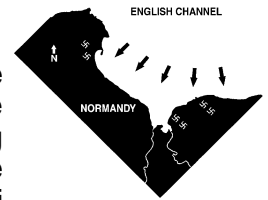
On the other hand, the 5th Amendment contains its own exclusionary clause by prohibiting persons from being forced to be a witness against themselves, and this rule is "self-executing." Those subjected to coercive police tactics have an automatic protection against the use of their involuntary statements, or evidence contained in them, at any subsequent criminal trial. The proper question for the Appeals Court was not whether a failure to administer the warnings violated the *Miranda* rule itself and rendered a confession inadmissible and the evidence obtained as a result of it inadmissible, but rather, whether the statement was involuntary in nature as a result of the full warnings not having been administered because the defendant insisted that he "knew his rights." The judgment of the Court of Appeals was reversed and the case remanded for them to determine whether the statement was voluntary or not. Justice Kennedy, in his concurring opinion, felt it was not necessary to address the *Miranda* question at all, as long as only the gun, and not the statement, was introduced in court.

The three dissenting Justices argued that the majority "closed their eyes" to the advantage the police would have in violating *Miranda* in order to collect physical evidence, and might create an incentive for police not to give the warnings. They said there is no other way to read the majority's opinion except as an encouragement for police to "flout *Miranda* when there may be physical evidence to be gained, and said it was odd, coming from the Court on the same day it decided *Missouri v. Seibert*, ante. They would have suppressed the evidence.

60th Anniversary of D-Day

June 6, 2004, marked the 60th anniversary of D-Day, the Allied invasion of Europe during World War II that signaled the beginning of the end of the Nazi regime. More than 325,000 allied troops from 12 countries crossed the English Channel at its widest point in rough weather to attack the German forces. They landed on five beaches along 50 miles of the Normandy coast of France. The Allies deployed 5,000 ships, nearly 11,000 airplanes, and 50,000 military vehicles. The fierce fighting that ensued left more than 10,000 dead and wounded; roughly 6,600 of those casualties were Americans.

In 2002, a committee called Normandie Memoire 60th Anniversary was formed to assist the return of veterans and their families, many of whom stayed in private homes. In addition, it hosted parades, festivals, and concerts to celebrate the liberation of French towns and villages in the region, and worked to increase youth awareness of D-Day through schools and youth organizations so that the monumental events of 1944 will not be forgotten.



PSTC GIVES OUT TRAFFIC ENFORCEMENT AWARDS

This year's Looking Beyond the Traffic Ticket Awards luncheon was held on May 14, 2004, at the Beacon Resort in Lincoln. Many officers were nominated by their departments for their dedicated service.



Officer Ranee Boyd, a seven year veteran of the Concord Police Department, used her keen powers of observation to arrest a fugitive from justice who was wanted out of Hartford, Vermont. The subject was listed as a known drug addict who was suicidal, operating a stolen vehicle, and considered armed with an unknown firearm. During her patrol, Officer Boyd spotted a vehicle similar in description to the stolen vehicle, radioed headquarters and confirmed the vehicle was stolen. While she was keeping the vehicle under surveillance until backup officers could arrive, the car pulled into an apartment complex, compelling Officer Boyd to take immediate action by initiating a felony stop. The fugitive attempted to run, but Officer Boyd managed to take down both the fugitive and another male passenger at gunpoint until backup officers arrived. For her efforts, Officer Ranee Boyd received the OUTSTANDING ARREST-CITY award.

Officer Joseph Goodridge of the Merrimack Police Department was presented with the HOMELAND DEFENSE award for a traffic stop he made last summer that was truly indicative of looking beyond the traffic ticket. He stopped Abbas El-Meslem for failure to yield to an emergency vehicle and obtained the requisite information regarding the owner of the vehicle, an individual who was using an address in the Province of Quebec, Canada as his residence. Officer Goodridge ran the information through NCIC and the local FBI office in Bedford, NH, and with further information from the operator, El-Meslem, discovered the owner of the vehicle was on the top-ten wanted list for deportation by the United States Immigration and Naturalization Service. As a result, El-Meslem was detained by the FBI and the INS and the vehicle he was operating was confiscated. Papers recovered from the vehicle were forwarded to the United States Secret Service for examination pertaining to links to terrorist plots in both Canada and the United States.

Also, NH State Police Trooper Kathleen Lord was recognized with the OUTSTANDING ARREST-STATE Award for a stop she made during the summer of 2003 to check on a suspicious vehicle. She made several observations of the driver, which led her to believe that he might be impaired by alcohol or drugs. The driver continually stated that he was okay, and tried to dissuade Trooper Lord from approaching his vehicle. However, she continued to investigate further and immediately observed suspected cocaine, marijuana and drug paraphernalia inside the vehicle. She ordered the driver to exit the vehicle, and noticed that he was fumbling around with a knapsack inside the vehicle. She separated him from the knapsack and seized the contraband within plain view before advising him that he was under arrest. The suspect, on probation for previous offenses, physically resisted arrest and had to be sprayed with OC prior to being handcuffed. The vehicle was towed, impounded and searched pursuant to a search warrant. Located within the knapsack were a loaded .40 caliber Beretta pistol, suspected marijuana, suspected cocaine, oxycontin, and various items of drug paraphernalia.

Here is the complete list of officers recognized at this year's ceremony: Officer Anthony Ciampoli, Amherst Police Department; Officer Jason Fiske, Belmont Police Department; Officers Ranee Boyd, William Brouillet, Robert Buelte, James Fallon, Christopher Gallagher, Carl Notarangeli and Master Police Officer Kevin Partington from Concord Police Department; Sergeant David Holmstock and Officer Ann Champagne, Durham Police Department; Chief Ronald Devold, Captain Paul Cyr, Sergeants Timothy Godin and Samuel Daisey, and Officers Brian Lamarre, Michael Cote, Corey Reindeau, Gerald Marcou and Scott Cassady of the Gorham Police

Department; Chief Robbie Dirsas, Lieutenant Thomas Boynton and Officers Dean Glover, Michael Cawley and Marshall Bennett of the Hampton Falls Police Department; Officer Matthew Ufford, Hanover Police Department; Officer Robert Akerstrom, Loudon Police Department; Officers Joseph Goodridge, Edward Pane and Brian Levesque, Merrimack Police Department; Officers Stephen Gontarz, Joshua Albert, Todd Moriarty, William Adamson, Michael Sullivan and Joseph Fricano from Nashua Police Department; Corporal Christopher Hutchins, Newfields Police Department; Officer Wayne Stevens, Newmarket Police Department; Officer Bradley Andrews, Newton Police Department; Officer Eugene Stahl, Pelham Police Department; Officer Michael Meath, Pittsfield Police Department; Officers Timothy Loveless and Erik Tine, Raymond Police Department; Detective Thomas Blair and Officer John Harding, Rochester Police Department; Officer John Lozowski, Salem Police Department; Sergeant Lawrence Holdsworth and Troopers William Graham, Anthony Caruso, Brian Strong, James Norris, Joseph Ebert, Gregory Ferry, Susan Harbour, David Hinkell, Mathieu Asselin, Peter McConnell, Daniel Brow, Gary Ingham, Kevin Macaione, Kathleen Lord, and David Appleby of the New Hampshire State Police; and Chief Douglas Moorhead and Sergeant Katherine Brunelle, Woodstock Police Department.



A WORLD ABUZZ WITH LOUD MUFFLERS

Summer is here and along with it the perennial problem of "loud muffler" complaints to police departments.

Another factor has been added to the mix this year, in the form of HB 243, passed by the Legislature and effective as of June 16, 2004 (Chapter 259, Laws of 2004). This bill repealed the section of the law on

motor vehicle exhaust systems, RSA 266:59, paragraph III, which stated that no replacement muffler on a vehicle could be louder than the original equipment muffler. Paragraphs I and II and the definition of "muffler" in RSA 259:66 remain, and a muffler is still defined as a device with baffles, chambers or other method to prevent excessive smoke and noise, and those sections of the law that prescribe decibel limits for motorcycles still remain unchanged.

The Legislature's expressed intent in passing this law was to address alleged abuses in its enforcement, particularly as it relates to older-model vehicles for which "stock" mufflers and exhaust systems are no longer available, and replacements have to be custom-fabricated.

The Governor refused to sign the bill, but it became law without his signature when it became apparent that any veto would be overridden.

At least one cosponsor of the bill has indicated a willingness to sit down with representatives of law enforcement between now and the next legislative session, in an effort to come up with a new bill that will be more workable for the police to enforce.

POLICE RESPONSE TO POSTAL CRIMES



According to the United States Postal Service, postal crimes are on the increase. Although the Postal Inspectors are specifically tasked with investigating and prosecuting these crimes, local and state police can be the first line of defense.

In an average year, the Postal Inspectors, founded in 1737, make about 12,000 arrests, about half for mail theft or possession of stolen mail. They respond to more than 1,000 postal-related assaults and credible threats, investigate some 3,000 cases of mail fraud involving millions of dollars and solve more than half of them, investigate more than 100 instances of mail bombs and suspicious items in the mail, 100 robberies of post offices and postal employees, respond to about 75,000 consumer fraud complaints involving three-quarters of a million victims, arrest hundreds for child sexual exploitation through the mails, 1,500 drug traffickers and money launderers, conduct 1,000 embezzlement investigations, \$100 million in fraudulent worker's compensation claims, and their crime labs conduct more than 4,000 forensic examinations, provide expert testimony in court and identify more than 1,300 violators of postal laws. The 2,000 Postal Inspectors carry firearms, make arrests and serve federal warrants and subpoenas, and enforce about 200 federal laws involving the mail. They also maintain a uniformed security force of about 1,400

officers assigned to major mail facilities and the escorting of high-value postal shipments.

The Postal Inspection Service has lots of high-tech equipment and other resources that are available to assist local and state police on request. They maintain five crime labs around the country that can analyze evidence and trace suspects, as well as providing expert testimony when postal cases are brought to trial. These labs can make handwriting comparisons, compare printing and typed material, detect counterfeit paper and documents and indented writing, and develop and compare fingerprints, palm prints, and sole prints. The Washington, DC crime lab can provide chemical analysis, bomb identification, and analyze suspected controlled substances. Postal inspectors can assist state and local police in public education efforts to prevent such crimes as postal fraud, mail stolen from house mailboxes, and mailbox vandalism.

Postal Inspectors can help investigate and locate suspects and witnesses by providing state and local police with information from Postal Service records. They can set up a "mail cover" to help locate a fugitive or to investigate felonies. They can assist in serving arrest warrants for postal employees who are on duty on federal property, and assist in securing mail or other Postal Service property in the possession of any postal employee at the time of arrest. They can help you obtain a federal search warrant and make controlled delivery of mail containing illegal drugs. They can assist you in child pornography investigations where the mail was used to send or receive pornographic pictures of children. They can assist in obtaining a share of goods or money forfeited in postal crimes. They can also provide crime prevention officers with pamphlets and written materials on mail fraud, mail theft, mailbox vandalism, and other postal crimes. These pamphlets cover such titles as Bombs by Mail, Bomb Threat, Consumer and Business Guide to Preventing Mail Fraud, Consumer Fraud by Phone or Mail, Identity Theft, and Mail Cover Requests.

Officers on patrol are often the first to hear about mailbox vandalism, thefts of mail, or scams conducted through the mail. When stopping vehicles and persons and conducting searches, they will often come across evidence of postal crimes that they did not expect to encounter. Common crimes where the police are the first responders include theft from postal clerks, carriers and drivers, theft from postal vehicles, theft of mail from mailboxes, including collection boxes on the street and rural mailboxes, theft from apartment house and cluster boxes, possession of stolen mail, and fraudulent credit card applications, possession of Postal Service uniforms or property, tampered or broken into postage meters, and the theft of large

quantities of stamps in single-stamp form where the cancellations have been "washed off" and they can be illegally used again, by selling them at a discount on the street. You should make sure to contact the Postal Inspectors whenever you encounter or suspect such crimes.

State search warrants are not honored by the Post Office. You need to contact the Postal Inspectors, who will assist you in obtaining and serving a federal search warrant. The Post Office can detain and secure mail for a reasonable time while you are contacting the Postal Inspectors about a federal warrant.

The Boston Division of the Postal Inspection Service is located at 495 Summer Street, Suite #600, Boston, MA 02210-2214, and can be reached by telephone at (617) 556-4400.

THIS MONTH IN HISTORY – JUNE

10 years ago 1994 (June 22) Ken Griffey Jr. breaks Babe Ruth's record for most home-runs by the end of June.

15 years ago 1989 (June 21) U.S. Supreme Court permits burning the U.S. flag as political expression.

20 years ago 1984 (June 4) Bruce Springsteen releases "Born in the USA" album.

40 years ago 1964 (June 29) The Civil Rights Act of 1964 is passed after an 83-day Senate filibuster.

50 years ago 1954 (June 14) President Eisenhower signs an order adding the words "under God" to the Pledge of Allegiance.

75 years ago 1929 (June 27) The first color television is demonstrated in New York City.

100 years ago 1904 (June 15) The General Slocum, an excursion steamboat, burns in New York's East River; more than 1,000 die, more American deaths than on the Titanic.

E- 911 SPEAKS MANY LANGUAGES

According to Director Bruce G. Cheney, the "Language Line Service" of the Emergency 911 Communications Bureau of the Department of Safety is being utilized more and more by law enforcement. Using the Language Line, 911 agents can connect instantly with a national service that can provide on-the-spot translations from hundreds of different languages into

English. Not only can they interpret what a caller is saying over the phone, but they have also provided, through speakerphones, interpretations at police stations and courthouses.

During the first three months of this year, 911 handled 132 Language Line requests running a total of 1,059 minutes with an average call length of eight minutes. This included 74 callers who spoke only Spanish, 14 in Arabic, 13 in Portuguese, nine in French, five in Vietnamese, three in Russian, two each in Chinese Mandarin, Greek, and Bosnian, and one each in Taiwanese, Indonesian, Cambodian, Farsi (the language of Iran), Nepali, Polish, Somali, and Albanian.

SHOULD WE LEGALIZE CONTROLLED DRUGS?

Some people seem to think so, but the facts in places where it has been tried contradict this notion.

A decade after Colombia legalized possession of 20 grams of marijuana and one gram of cocaine or heroin for private consumption, their President wants to restore total prohibition, according to an article by Kim Housego in The Associated Press. Colombians, once the largest producers of illegal drugs, have themselves now also become major consumers. Where they hoped to reduce consumption by counseling and education, the government never invested enough time or money into this effort, and drug use has increased by 40% over the past 10 years, according to government estimates. A recent study showed that nine out of every 100 Colombians living in cities, and between the ages of 12 and 25, regularly use drugs. Legalization has apparently made drug use and abuse socially acceptable in a society that once frowned on them as sources of corruption and violence. Their Supreme Court has ruled that drug use is a matter of free choice and threatens to strike down any effort to re-criminalize drug use unless it is done by means of a constitutional amendment.

Right now, cocaine is cheaper to buy than beer, at \$3-\$4 per gram on the street. In many cities, drug dealers, pimps and prostitutes lurk in doorways and addicts loll lifelessly atop piles of broken cardboard boxes, but the police can't do much about it. The dealers know they can be arrested only if caught with more than the legal limit, and they know exactly what their rights are. Legalization in the U.S., anyone?

A perfect summer day is when the sun is shining, the breeze is blowing, the birds are singing, and the lawn mower is broken.

-- James Dent

INTELLIGENCE AT THE GROUND LEVEL

By: Earl M. Sweeney
Assistant Commissioner of Safety

Beheadings of American civilians in retaliation for "humiliation" of Iraqi prisoners - hardly "an eye for an eye and a tooth for a tooth." The bitter truth is that some substantial portion of hundreds of millions of people hate us and continue to plot terrorist acts against us.

As Condoleeza Rice, the President's National Security Advisor, has testified, speaking of terrorists, "they only have to be right once; we have to be right 100% of the time" if we are to prevent another major terrorist attack on our shores.

This nation is at war - whether we like to admit it or not - and it's a war vastly different than any we have previously fought. Just as it took an alert populace and alert law enforcement during World War II to root out saboteurs who tried to infiltrate our shores, so today will it take an alert populace and alert law enforcement to protect our nation.

Alertness means police officers being on the lookout for suspicious persons and occurrences, reporting these situations promptly and to the right people, and letting the citizens of our communities know that we would like them to do the same. "Oh, oh - there he goes again!" The simple traffic stop can be an important source of intelligence, as well as a deterrent to potential terrorist acts. When people who are intent on committing crimes see a vigilant police presence and believe there is a good chance that they may be stopped and checked, this is a deterrent to all kinds of wrongdoing. If this happens while patrolling in the area of a critical piece of infrastructure such as a bridge, a crowded shopping area, a public building or some other potential target, it is twice as effective. And once the vehicle is stopped, "looking beyond the traffic ticket" can result in some important criminal intelligence. Remember, the Oklahoma City bomber was snared in a traffic stop, and the 9/11 terrorists drove all over the Eastern Seaboard testing for soft targets before that fateful flight.

Information from citizens is crucial, too. Five out of the 19 hijackers lived in local communities for a full year prior to 9/11, and citizens came forward after the fact and related suspicions that, had they been reported prior to that and someone had "connected the dots" of this intelligence, they might have been captured and at least deported before they could have committed this atrocity. To garner this intelligence from our citizens, police departments need, formally and informally, to let the people of their communities know what, when, and how to report things. They need to encourage people

that if they see something suspicious that draws their attention, they should report it and not be embarrassed if it doesn't turn out to be what it looked like.

Once intelligence is collected, it should be forwarded to the State Police Intelligence Unit. There, Sgt. David Cargill and his colleagues will analyze it, and it just may fit in with or corroborate another piece of intelligence from somewhere else, and be just what the feds are looking for.

It seems that there are new threats looming on the horizon every day. The bombings in Madrid, Spain, introduced a new threat - the backpack bomb. Vehicle-borne explosive devices (car bombs) have been joined in some parts of the world by floating explosive devices - handmade veritable floating mines placed in the water. And the FBI's recent arrest of a man in Ohio who was planning to blow up a shopping mall shows that the terrorist threat is real, and as close as tomorrow's news.

THE CLICKER ENTERS THE CLASSROOM

Thanks to a grant from the NH Highway Safety Agency, PSTC has a new tool for instructors to use. It looks like a TV remote control, and one is issued to each student in a class. The instructor can ask a verbal, multiple-choice question about the topic from the podium, and the students each click on what they think is the correct answer. Their responses are displayed at the podium, and the instructor knows instantly whether or not most of the students "got" the point he or she was teaching. No student is embarrassed at having raised his or her hand and given a "wrong" answer, and the instructor can clarify the point instantly and be sure everyone comes away from the class with a clear understanding of the material.

We have been experimenting with this new device at many of our regional classes, and find that both the students and the instructors are very enthusiastic about it.

BARBECUE WARNING--Throwing soaked hickory chips or apple wood into your barbecue to add a smoky flavor is a great idea, but grilling expert Bill Wight cautions against using certain kinds of woods. Avoid conifer trees, such as pine, fir, spruce, redwood, cedar, and cypress. They contain toxic chemicals and heavy resins that will coat your meat with a dark film. Don't use lumber scraps, which may have been treated with arsenic or other poisonous wood preservatives, or any wood that has been painted or stained.

HOMELAND SECURITY 2004 GRANT FUNDING IS IN

The Department of Homeland Security has awarded approximately \$21 million in federal funds to New Hampshire. Departments will soon be able to access these funds by making a grant request to Pamela Urban-Morin, the Grants Coordinator at the Department of Safety. If the grant is for equipment, the equipment must be something that is on the federally approved list of items that you can purchase with Homeland funds. Certain items such as ATVs will no longer be eligible. All grants must also relate to the state's federally approved Homeland Security Plan. The state has 15 months in which to spend the money.

This year's grant falls into three distinct categories - Law Enforcement Terrorism Prevention, Terrorism First Responder, and Citizen Volunteers, with specific amounts allotted to each category. The funds cannot be mixed between the categories. Of these funds, at least 80% must go to local communities and counties. However, it is anticipated that this year, there will be a change in how the funds are allocated. In the past, part of the local funds were distributed strictly on the basis of population, and another portion was awarded on a competitive basis, based on the hazards that a particular community was trying to protect against, such as a nuclear power plant, a racetrack that attracts large crowds of people, a bridge that is vital to transportation in the area, an airport, a courthouse or other public building, etc.

Because there are less funds available this year and the prospect of even less in subsequent years, with the lion's share going to major metropolitan areas such as Chicago, New York and Los Angeles, Governor Craig Benson has requested that the funds all be allocated on the basis of threat rather than solely on a population basis. He is also suggesting that wherever possible, two or more communities collaborate together on a grant that will address a threat in a particular geographic area. More money will be allocated to training first responders. Regional hazardous materials teams and SOUs will receive some support, and a priority will be to complete the purchase and distribution of interoperable radios to first responders.

There are still some communities that have not come up with a plan to spend their FY 03 funds, but these do not lapse until next spring. At some point, communities that have not claimed their funds will be given a cutoff date and any unclaimed funds will be made available to other communities on the basis of need. A mailing will be made to local police and fire departments and posted on the nh.gov website once the Governor and

Council have approved a final allocation methodology.



Eye Surgery May Hurt Night Vision

Every year, more than a million Americans elect to have LASIK (laser-assisted in-situ keratomileusis) surgery to correct their vision. But a recent study at Ohio State University says that as many as a third of these eye-surgery patients report they have trouble seeing at night afterwards. Vision problems include seeing halos, star bursts, and glare surrounding lights. The study found that these symptoms may persist in some patients long after their eyes have healed. Older patients, those with flatter corneas, and those who needed to have the surgery redone were more likely to report problems.

LASIK surgery was approved by the Food and Drug Administration in 1998. "We don't know if night vision problems continue indefinitely," said Melissa Bailey, co-author of the OSU study. "LASIK hasn't been around long enough or studied deeply enough."

DRIVERS HAULING HAZ MAT TO BE FINGERPRINTED

The Department of Homeland Security has issued a regulation that all applicants for commercial licenses, who wish to have a hazardous materials endorsement, must be fingerprinted and submit to an FBI criminal record check, starting in January 2005. In the meantime, name and date of birth checks are already in effect for these licensees.

This is in response to threats from Al Queda and other terrorist organization to hijack trucks carrying hazardous materials by obtaining commercial licenses for their members and infiltrating legitimate trucking companies.

A POTENTIALLY DANGEROUS COMBINATION

PSTC was recently advised by SABRE OC that concentration of the SABRE dual propellant system (DPS) in stream configuration can potentially cause an incendiary reaction when used in conjunction with an Air TASER™. The two easiest fixes for this problem would be to either change to cone format DPS or use water-based OC. Either of these solutions, according to the manufacturer, are Taser™ compatible.

IN MEMORIAM, DONALD JANVRIN

Donald Janvrin, 80, died at his home in Hampton Falls on May 31, 2004. He was a Selectman for 19 years, Police Chief, and a charter member and Deputy Chief of the volunteer fire department. Mr. Janvrin was a World War II Army veteran and worked 45 years in the

family lumber business. Our condolences to his wife, Esther, and all his family.

RETIREMENTS

Major Michael Russell, Concord PD
Capt. Kevin Hamilton, NH State Police
Capt. Raymond Burke, NH State Police
Sgt. Michael Doucette, NH State Police
Lt. Paul Moore, Rochester PD
Lt. Robert Bryant, NH Fish & Game
Lt. Edmond Cournoyer, NH Fish & Game
Sgt. Michael Levesque, Nashua PD
Officer Daniel Donahue, Nashua PD
Officer Nelson Gerow, Nashua PD
Officer Stephen Gontarz, Nashua PD

PROMOTIONS

Capt. Marvin Alexander, Lebanon PD, to Deputy Chief
Lt. Gary Smith, Lebanon PD, to Captain
Sgt. Scott Rathburn, Lebanon PD, to Lieutenant
Supv. John Parsons, Lebanon PD, to Sergeant
Officer Christopher Davis, Lebanon PD, to Corporal
Officer Shawn Freitas, Lebanon PD, to Corporal
Lt. Kathleen Jones, Plaistow PD, to Deputy Chief
Lt. John Seusing, Nashua PD, to Captain
Sgt. Fred Nichols, Nashua PD, to Lieutenant
Officer Raymond McDannell, Nashua PD, to Sergeant
Ptl. Phillip Nichols, Nashua PD, to Master Patrolman
Officer Robert Bromley, Alstead PD, to Lieutenant
Officer Kevin DiNapoli, Hudson PD, to Sergeant
Sgt. Paul Callaghan, Rochester PD, to Lieutenant
Sgt. Owen Wellington, Tilton PD, to Captain
Cpl. Ryan Martin, Tilton PD, to Sergeant
Officer Michael Farrington, Tilton PD, to Det. Sergeant
Officer Bruce Clough, Tilton PD, to Corporal
Officer Gordon Ramsay, Franklin PD, to Sergeant
Officer Joshua Beauchemin, Franklin PD,
to Master Patrolman
Officer Paul Moller, Weare PD, to Detective
Officer Joel Huntley, Walpole PD, to Sergeant
Officer Wayne Perreault, DMV's Bureau of Highway
Patrol and Enforcement, to Captain

Questions Parents Should Ask about Camp

Before you sign up your child for a day or overnight camp, the American Camping Assoc. recommends asking the camp director these questions:

1. What is the staff-to-camper ratio? Overnight camps should have one staff member for every six campers ages 7 to 8 (day camps should have one staff member for every eight campers of these

ages); one staff member for every eight campers ages 9 to 14 (day camps, one for every 10); and one staff member for every 10 campers 15 to 17 (day camps, one for every 12).

2. What percentage of the staff is 18 or older? The association said 80 percent of the staff should be adults. Sixteen-year-olds are allowed to assist at camps, but they should be at least two years older than the campers they're supervising.

3. Is there a full-time nurse on the staff?

4. Is there a designated place to store insulin and allergy medicines?

5. How are behavioral and disciplinary problems handled?

PORTSMOUTH PD WINS AWARD

Portsmouth Police Chief Michael J. Magnant is proud to announce that the department has won the prestigious Robert Trojanowicz Memorial Community Policing Award. The award is named after Professor Robert Trojanowicz of Michigan State University, known as the "Father of Community Policing. The award is given to outstanding police agencies for their commitment to excellence in community policing and partnership development within their communities. The Portsmouth Police Department won in the category for cities with baseline populations between 15,000 and 30,000.

The award was presented at the annual New England Community Policing Symposium on June 22, 2004 at St. Anselm College in Manchester, NH. The award is sponsored by the New England Community Police-Partnership (NECP2) at St. Anselm College. The primary purpose of NECP2 is to help institutionalize the concept of community policing and other proactive police techniques including coalitions, partnerships, and crime and violence prevention throughout New England. All police departments throughout New England are invited annually to compete for this award. This year, two police departments in New Hampshire won the award, Portsmouth and Lincoln. The Portsmouth Police Department's entry detailed the programs that have been initiated and maintained for the past 15 years, including Selective Traffic Enforcement, Portsmouth Alcohol Awareness Initiative, School Resource Officer Program, Alcohol Compliance Checks Program, Internet Crimes Against Children Task Force, Police Athletic League, National Night Out, the Special Investigative Unit and the Child Safety Seat Program. These programs have been funded through grants or other sources. Despite budgetary constraints, the

department has, through these programs, made community-policing outreach a priority, especially to the children and the elderly.

SGT. NASH RECEIVES DARE AWARD

Sgt. Mark Nash of the Holderness Police Dept. has been named the State of New Hampshire's DARE Officer of the Year, in recognition of his eight years of drug awareness education to Holderness fifth graders. He's seen more than 200 students go through the program, which tries to show kids positive alternatives to drugs, alcohol, and tobacco and how to make good decisions. Later this summer, he'll be going to Idaho as a DARE mentor for some start-up programs out there. Keep up the good work, Sgt. Nash!

AED'S ARE LIFE SAVERS

The family of a Plaistow man credits Officer Robert Kelley of Sandown PD with saving his life when the 69-year-old had a heart attack. After Officer Kelley used his automatic external defibrillator, the man was taken to the hospital, where he had surgery. He is now recovering. The man's family is very grateful to Officer Kelley, who commented, "I was in the right place at the right time with the right equipment; that's really all there was to it."

MAXX WILL BE MISSED

Our condolences to Officer Steve Smagula and the Concord Police Department for the recent loss of their Police K-9 Maxx, a five-year-old German Shepherd. Maxx succumbed to a serious medical condition on June 2, 2004.

GOOD JOB, NEW DURHAM PD!

After being lost in the woods of New Durham for more than four hours, two children were found late Saturday night, May 29th. Emergency personnel from New Durham, Middleton, Milton, Farmington and the State Police had responded to aid in the search after their parents reported the children missing. The brother and sister, 9 and 10 years old respectively, were tracked to the top of Birch Hill Mountain by Lt. Shawn Bernier, and his K-9 partner "Tank", and Officer Terry Place, all of the New Durham Police Department. Tank, a Rottweiler, is a certified patrol dog.

BELKNAP COUNTY SHERIFF GOES HIGH-TECH

The Belknap County Sheriff's Department recently acquired a new piece of equipment called a mini-crimescope, through a federal Street Sweeper grant. It shoots a beam of concentrated ultraviolet and

infrared light that highlights evidence that might be invisible to the naked eye. The crimescope saves a lot of time and can detect all sorts of substances, such as body fluids, fingerprints, boot prints, gunpowder residue, gasoline, clothing fiber, drugs, etc. It has to be plugged in, but the Sheriff's Department has a portable generator in its crime scene van, so this is not a problem.

BRING ON THE ROBOTS

Thanks to Senator Judd Gregg's help in getting federal funds and to corporate sponsors in Nashua, the State Police and Nashua PD were each able to get a battery-powered robot that will enable bomb squad members to safely deal with explosives at a distance. Since they include microphones and cameras, they can also be used to speak with criminals or hostages without putting an officer's life in danger. Technicians can control the 500-pound robots as one would a remote-controlled car. The robots can also be equipped with lethal or non-lethal weapons.

HIGHWAY PATROL & ENFORCEMENT HAS NEW CHIEF

Motor Vehicle Director Virginia Beecher announces the appointment of Wayne J. Perreault of Rochester to the position of Captain and head of the DMV's Bureau of Highway Patrol and Enforcement.

Capt. Perreault is a graduate of Spaulding High School in Rochester, a distinguished graduate of the US Air Force Security Police School, and holds an Associate in Science degree in Criminal Justice from Southern Maine College. He has also graduated from the NH Police Academy, the Command Training Institute at Babson College, the US Air Force NCO Preparatory Course, and the Police Standards and Training First Line Supervisor Course.

Prior to joining DMV in 2001, Capt. Perreault served with the Rochester Police Department, where he worked as a Patrol Officer, Detective, Patrol Sergeant, and Detective Sergeant and head of their Investigative Services Bureau. He has received numerous awards and recognitions during his professional career, including Security Police Officer of the Year at Pease Air Base, twice Outstanding Officer of the Year at Rochester PD, a Congressional Award, a PSTC Looking Beyond the Traffic Stop Award, a medal for bravery, and numerous commendations. He was commander of the SOU and the Color Guard at Rochester, PD, a firearms and use of force instructor, and a field training officer.

Prior to his recent promotion, Capt. Perreault was assigned to the DMV's special investigations unit,

where he handled crimes involving the DMV, such as title fraud, auto theft, false documents, identity fraud, and non-resident illegal alien fraud.



"SINGING COP" TO PURSUE MUSIC CAREER

Officer Daniel Rodriguez will soon retire from NYPD to spend full time on music. He became well-known when he performed at a Yankee Stadium prayer service shortly after the September 11 attacks. Officer Rodriguez stated that he loved his police job, but wanted to see how far he could go in his second career.

NEW DEGREES FOR LAW ENFORCEMENT

The University of New Hampshire is adding two new degree programs to prepare students for careers in law enforcement, courts, corrections, and juvenile justice. There is an undergraduate program in Justice Studies, approved earlier this year, and a recently approved graduate program in Justice Studies that is the first of its kind in northern New England.

FRANKLIN PIERCE COLLEGE TO SPONSOR CONFERENCE

The Manchester campus of Franklin Pierce College will be holding a conference entitled "Public Safety and the News Media in Post 9/11 America" on August 23 & 24, 2004. Charles Moose, former Chief of Police in Montgomery County, Maryland and head of the multijurisdictional task force charged with apprehending the Washington, DC area snipers in October 2002, will be the keynote speaker at a dinner at the Bedford Village Inn on August 23rd. A Law Enforcement Technology Fair will also be held during the conference. The cost for the full conference is \$75 for Franklin Pierce College students and \$130 for all others. For the dinner only, cost is \$35 per person. To register, call Fitzwater Center Conferences at (603) 899-1039, or visit the website at www.fpc.edu and click on "conferences/institutes."

CLASSES AT ROGER WILLIAMS UNIVERSITY

The following classes will be held at the Roger Williams University Baypoint Inn & Conference Center, 144 Anthony Road, Portsmouth, RI:

"Basic Instructor Development for Criminal Justice Trainers" will be held August 2-6, 2004. This course is designed to introduce new instructors to the skills needed to be a quality trainer. Participants will be introduced to the principles of adult learning. They will understand the necessity to prepare for their

presentations, including developing training objectives, lesson plans and incorporating various teaching methods. The cost is \$350.00, which includes materials, breaks, and lunch.

A "Cognitive Interview Seminar" will be held on August 12-13, 2004. It will include information and background on the Cognitive Interviewing Method and instruction on its use. It is useful for questioning victims and witnesses and can be adapted for use in interviewing children. The cost is \$175, which includes materials, breaks and lunch.

"The road to Accreditation: Getting Started for Accreditation Managers, Union Members, and Police Administrators" will be held on September 15, 2004. This seminar will address the duties and responsibilities of the new accreditation manager. It will focus on organizing the office, setting up files, time management, and other necessary skills. The cost for the full day is \$75.00, which includes materials and lunch. The cost for a half day (no lunch) is \$50.

A ten-day program, "Command Training - First Line Supervisor Course" will be offered Monday through Friday from September 27 - October 8, 2004, and also from November 29 - December 10, 2004. Attendees will examine topics including Operational Leadership and Management Principles, Problem Solving, Organizational and Interpersonal Communications, Labor Relations, Disciplinary Issues, and Ethical Decision Making. The cost is \$800, which includes materials, breaks, and lunches.

To register for these classes, or for more information, Contact Denise Owens at (401) 254-3320, or Liz Campo at (401) 254-3731.

INVESTIGATIVE TRAINING SEMINARS

On July 29 & 30, 2004, investigative training seminars will be held at the Natick Police Dept., 20 E. Central St., Natick, MA. These seminars may be taken as a 2-day program or you may attend either daily session. Cost is \$150 per day. Some of the topics to be covered include: eyewitness evidence in a death investigation; ways to prevent scene contamination; live line-ups; photo line-ups; field identification procedures for a suicide; and recent cases in which DNA evidence has been used to exonerate individuals convicted primarily on the basis of eyewitness testimony. For more information, or to register, call (305) 872-5701.

What Are the Odds?

Les Krantz, who is the author of What the Odds Are, put together this interesting statistical look at the human experience. These are the odds that you will ...

Undergo an audit by the Internal Revenue Service -- 1 in 100

Give birth to a genius -- 1 in 250

Be a victim of violence in the suburbs -- 1 in 2,000

Hit a hole in one -- 1 in 15,000

Develop a brain tumor -- 1 in 25,000

Be killed in a fire -- 1 in 40,000

Be struck by lightning -- 1 in 240,000

Be hit by a baseball at a major league game -- 1 in 300,000

Drown in your own bathtub -- 1 in 685,000

Win a state lottery jackpot -- 1 in 4 million

Be killed in an airplane accident -- 1 in 4.6 million

STATE POLICE ACCEPTING APPLICATIONS

The New Hampshire State Police is accepting applications for Probationary Trooper through July 23, 2004. The minimum qualifications are completion of high school or GED, plus either 60 college credit hours, two years full-time experience as a certified police officer, or two years full-time active military service with an honorable discharge. The starting salary for this position is \$34,394. After a successful probationary period of one (1) year, Probationary Troopers are promoted to the rank of State Police Trooper I with a salary range of \$37,313 - \$50,068. Troopers receive an excellent benefits package, including family health and dental insurance, annual and sick leave, retirement pay after 20 years of service and minimum age of 45, and many other benefits. For more information and to download an application, visit the New Hampshire State Police web site at www.nh.gov/safety/nhsp or the Division of Personnel web site at www.nh.gov/hr. The NH State Police Recruitment and Training Unit can be reached by telephone at (603) 271-2728.

HELP WANTED IN BETHLEHEM

The Bethlehem, NH Police Dept. is accepting applications for a full-time Patrol Officer. Experience and NH certification preferred, physical agility test and background investigation required. Pay grade commensurate with experience, starting pay range

from \$13.66 per hour. Send resume to Bethlehem Police Dept., PO Box 808, Bethlehem NH 03574. EOE

JACKSON SEEKS FT OFFICER

The Town of Jackson, NH, located in the White Mountains and steeped in history and beauty, is seeking a FT police officer. The town has a population of approximately 850 year-round residents, with an additional 3,000 tourists and second-home owners. Full-time certified officers are preferred. Out-of-state full-time certified officers will also be given preference if the academy law package applies. Salary range is \$30,000 - \$33,000. The Town of Jackson is an Equal Opportunity Employer. Please resume to : Jackson Police Dept., PO Box 187, Jackson, NH 03846.

Safe Eats on Vacation



If you'd like to minimize your risk of stomach upset on vacation, follow these suggestions from travel expert Deborah DeYoung:

- Eat very hot food because heat kills bacteria, or eat food that has been kept very cold.
- Skip salad bars and buffets to avoid bacteria-laden foods that often are not kept at correct temperatures.
- Don't drive for long periods without eating. Stop every few hours to have a meal or light snack.
- If fast food is your only option on the road, go for grilled meats instead of fried.
- Wash your hands frequently.

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